APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-333

UNITED AIR LINES, INC.,
Petitioner,

vs.

CAROLYN J. EVANS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR CERTIORARI FILED SEPTEMBER 3, 1976
CERTIORARI GRANTED NOVEMBER 1, 1976

IN THE

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UNITED STATES COURT OF APPEALS,
Seventh Circuit—Docket.

No. 75-1481

CAROLYN J. EVANS
Plaintiff-Appellant,

vs.

UNITED AIRLINES INC.
Defendant-Appellee.

DOCKET ENTRIES

Date	Proceedings
5/30/75	Entered order stating the following: (1) appellant's docketing fee due immediately; (2) record will be filed with the Clerk by 6/16/75; (3) appellant's brief due 7/28/75; (4) appellee's brief due 8/29/75; (5) appellant's reply brief due 9/15/75. Clerk of D. C. ordered to prepare entire record.
5/30/75	Issued cert. cy. order 5/30/75 to Clerk, Ct. Reporter & J. Decker.
7/28/75	Filed 15c of Appellant's Brief—svc.
9/ 2/75	Filed 25c of Appellee's Brief—svc.
9/12/75	Filed 15c of Appellant's Reply Brief—svc.
9/29/75	Entered order setting appeal for oral argument on 11/6/75. Oral argument limited to 20 mins.

11/ 6/75	Heard and taken under advisement.
1/29/76	Filed Per Curiam Opinion.
1/29/76	Entered final judgment order Affirming, with costs.
2/12/76	Filed 25c of Appellant's Petition for Rehearing en banc—dist. en banc—svc.
2/20/76	Letter sent by Clerk requesting appellee file answer to appellant's petition for rehearing en banc by 3/1/76.
2/23/76	Filed O&3c of Motion of the Equal Employment Opportunity Commission to File Brief Amicus Curiae in Support of Petition for Rehearing and Suggestion for Rehearing En Banc tendered 25c of Brief—svc.
2/24/76	Filed 25c of EEOC's Brief as Amicus in support of Petition for Rehearing en banc—filed per order—svc., dist. en banc.
2/24/76	Entered Order Granting Motion to file Amicus Brief Instanter.
2/27/76	Filed O&3c of Appellant's Motion for leave to file supplemental brief—svc.
2/27/76	Filed O&3c of Appellee's Motion for Extension of time to answer appellant's petition for rehearing.
3/ 1/76	Filed 25c of Appellant's Supplemental Brief, per order—svc., dist.
3/ 1/76	Entered Order Granting Extension of time 3/5/76 to file answer to Petn. for rehearing.
2/26/76	Filed 25c of Appellant's Additional Authority—svc., dist. en banc.
3/ 5/76	Filed 25c of Appellee's Response to Petition for Rehearing en banc. svc., dist. en banc.
3/31/76	Filed 25c of Appellant's Supplemental Brief, per order—svc., dist. en banc.

3/31/76	Entered Order Granting Motion for leave to file supplemental brief instanter. Further ordered that appellee file response to such supplemental brief of the appellant within 7 days.
4/ 7/76	Filed 25c of Appellee's Response to Appellant's Supplemental Brief in Support of Petition for Rehearing—svc., dist. en banc.
4/ 6/76	Entered Order Granting Appellant's Petition for Rehearing.
4/26/76	Entered final judgment Order on Petition for Rehearing Reversing and Remanding, with costs.
4/26/76	Filed Opinion by J. Adams.
5/10/76	Filed 25c of Petition for Rehearing en banc of Appellee—svc, dist. en banc.
4/29/76	Filed O&lc of Appellant's Bill of Costs in the amount of $303.88—svc.
6/ 7/76	Entered order denying petition for rehearing.
6/ 9/76	Mandate Issued.
6/16/76	Filed receipt of D.C. formandate and record.
9/13/76	Filed receipt for petition for cert., from S.C. #76-333.
11/ 8/76	Filed order from Supreme Court dated 11/1/76 No. 76-333 granting petition.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

CAROLYN J. EVANS,
Plaintiff,
vs.
UNITED AIR LINES, INC.,
Defendant.
No. 74 C 2530

COMPLAINT

Plaintiff complains of defendant as follows:

I. This is a suit for injunctive and other relief authorized by and instituted pursuant to Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq*. The jurisdiction of the Court is invoked to secure protection of and to redress deprivation of rights secured by 42 U. S. C. § 2000e-2, making it illegal to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's sex.

II. Defendant United Air Lines, Inc. (hereinafter referred to as United) is a corporation doing business throughout the United States, with a major place of business in the Northern District of Illinois. Plaintiff Carolyn J. Evans is a stewardess employed by United, and is a resident within the Northern District of Illinois. The unlawful employment practices alleged herein were committed within the territorial jurisdiction of this Court as provided in 42 U. S. C. § 2000e-5(f). Defendant employs more than twenty-five (25) persons and is engaged in an enterprise affecting commerce within the meaning of 42 U. S. C. § 2000e.

III. Plaintiff filed charges with the Equal Employment Opportunity Commission (hereinafter referred to as EEOC) on

February 21, 1973, charging that defendant United discriminated and continues to discriminate against plaintiff on the basis of sex (female). Plaintiff complained of and does complain of the fact that United maintained a policy and practice of terminating females, but not males, from their flight personnel (stewardess) positions upon marriage or contemplation of marriage; that plaintiff was forced to resign her position as a stewardess pursuant to this policy; that United refused to reinstate plaintiff; and that, when United did later rehire plaintiff, it refused and continues to refuse to credit plaintiff with all her former seniority. On August 29, 1974, plaintiff was granted the right to sue in United States District Court by the EEOC pursuant to 42 U. S. C. § 2000e-5(f). A copy of the letter granting plaintiff the right to sue is attached hereto as Exhibit A. This suit has been filed within the required 90-day period prescribed in 42 U. S. C. § 2000e-5(f).

IV. Plaintiff Evans began employment as a stewardess for defendant United in November, 1966, and completed stewardess training on December 28, 1966. Plaintiff was subsequently forced by defendant United to submit her resignation from her position as stewardess pursuant to United's policy and practice of terminating females, but not males, from their flight personnel positions upon marriage or contemplation of marriage. Plaintiff's employment by United was effectively terminated in February, 1968, pursuant to aforesaid forced resignation in accordance with said policy and practice.

V. On numerous subsequent occasions, plaintiff sought reinstatement as a stewardess with defendant United and was refused such reinstatement by defendant. In November, 1971, plaintiff again sought such reinstatement, and was effectively re-employed as a stewardess by United on February 16, 1972. Following one month of training completed on March 16, 1972, plaintiff has continued as a stewardess in the employ of United to this date.

VI. Plaintiff has been credited by defendant with "Company" (or "pay") seniority as of February 16, 1972, and with "stew-

ardess" (or "system") seniority as of March 16, 1972. Among other effects, either or both types of seniority directly or indirectly determine a stewardess' wages, amount of minimum monthly compensation, amount of entitlement to furlough pay, amount of compensation for and duration and timing of vacation periods, rights to retention in case of furlough due to reduction in force, rights to re-employment after furlough, and rights to preference in assignment as to geographical location and type of aircraft.

VII. On November 7, 1968, defendant United and the Air Line Pilots Association, International (hereinafter referred to as Association), which was and is at all times relevant herein the exclusive collective bargaining agent of all stewardesses employed by United, concluded a "letter of agreement" whereby marriage would no longer disqualify a stewardess from continuing in the employ of United as a stewardess, and whereby stewardesses who had been terminated by reason of United's no-marriage policy would be offered reinstatement with no loss of seniority if they qualified under certain express conditions. A copy of this "letter of agreement" is attached hereto as Exhibit B, and is incorporated by reference as if set forth at length herein. As therein provided, plaintiff was excluded from the class of those eligible for reinstatement as active stewardesses with United.

VIII. On October 16, 1969, defendant United and said Association concluded a second "letter of agreement", a copy of which is attached hereto as Exhibit C, and is incorporated by reference as if set forth at length herein. As therein provided, plaintiff was excluded from the class of those eligible for reinstatement as active stewardesses with United.

IX. On October 16, 1972, plaintiff filed a grievance against defendant United protesting United's continuing failure to credit her with all former seniority. This grievance has been denied by United.

X. Defendant United has failed and refused and continues to refuse to credit plaintiff Evans with all former seniority

earned by plaintiff from the date of her initial employment in November, 1966, and the date of her initial graduation from stewardess training on December 28, 1966, as well as continuous seniority from those dates, and has thereby caused plaintiff to suffer loss of wages and other benefits. This is a continuing violation of 42 U. S. C. § 2000e-2, resulting from: (1) defendant United's wrongful conduct in implementation of its no-marriage rule, thereby forcing plaintiff Evans to be terminated as a stewardess in February, 1968, which conduct constituted discrimination on the basis of sex in violation of 42 U. S. C. § 2000e-2; (2) defendant United's wrongful exclusion of plaintiff from the reinstatement opportunity provided to others in the two letters of agreement (referred to in paragraphs VII and VIII herein) executed with Association, which served to perpetuate and continue United's discriminatory policy as applied to plaintiff in violation of 42 U. S. C. § 2000e-2; (3) defendant United's continued failure to provide for and offer plaintiff reinstatement as a stewardess until November, 1971, which failure constituted discrimination based upon sex in perpetuation of the effects of prior discrimination in violation of 42 U. S. C. § 2000e-2; and (4) defendant United's continuing implementation of and failure to remove from plaintiff the continuing and presently operative effects of its discriminatory practices and policies, which failure constitutes continuing discrimination based upon sex in violation of 42 U. S. C. § 2000e-2. As a result of defendant United's continuing discrimination against plaintiff because of her sex, plaintiff has been and continues to be deprived of her rightful seniority, wages, and other benefits of employment, in violation of 42 U. S. C. § 2000e-2.

Wherefore, plaintiff demands judgment against defendant United Air Lines, and prays for the following relief:

1. An order permanently enjoining defendant United from engaging in any discriminatory employment practices in violation of Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.;*

2. An order requiring defendant United to restore to plaintiff and credit plaintiff with all seniority back to the starting date of her initial employment with United, including credit for any period of time, since such date, during which plaintiff was separated from United by reason of the discriminatory conduct of United, as well as credit for all such seniority actually earned;

3. An order requiring defendant United to compensate plaintiff for all amounts of back pay and other benefits of employment lost as a result of the discriminatory employment practices of said defendant;

4. An order requiring defendant United to pay to plaintiff exemplary damages in the amount of One Hundred Thousand ($100,000) Dollars;

5. An order requiring defendant to pay the cost of this suit;

6. An order requiring defendant to pay reasonable attorney's fees;

7. Any and all other relief as the Court deems proper, equitable and just.

Dated: September 4, 1974

DORFMAN, DE KOVEN, COHEN & LANER
Suite 3301
One IBM Plaza
Chicago, Illinois 60611
467-9800
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

CAROLYN J. EVANS,
Plaintiff,
vs.
UNITED AIR LINES, INC.,
Defendant.
} Civil No. 74 C 2530

ANSWER

Now comes the Defendant and answers the Complaint as follows:

1. Defendant admits that Plaintiff purports to bring this action under Title VII of the Civil Rights Act of 1964 but denies that the jurisdictional prerequisites under the Act have been met.

2. Defendant admits the allegations of paragraph 2 but denies that Defendant has committed an unlawful practice.

3. Defendant admits that a letter from the Equal Employment Opportunity Commission dated August 29, 1974 was attached to the Complaint as Exhibit A but is without information or knowledge sufficient to form a belief as to the remaining allegations of paragraph 3.

4. Defendant admits that Plaintiff began employment as a stewardess for Defendant in November, 1966 and completed stewardess training on December 28, 1966. Defendant further admits that Plaintiff's employment was terminated by her resignation in February, 1968. Defendant denies the remaining allegations of paragraph IV of the Complaint.

5. Defendant admits that in November, 1971, Plaintiff sought employment as a stewardess and was employed as a

stewardess on February 16, 1972 and further admits that following one month of training completed on March 16, 1972, Plaintiff has continued employment as a stewardess. Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations of paragraph V.

6. Defendant admits the allegations of paragraph VI, except denies that Company seniority is "pay" seniority or that stewardess seniority is "system" seniority, the opposite being true.

7. Defendant admits the allegations of paragraph 7 of the Complaint.

8. Defendant admits the allegations of paragraph 8 of the Complaint.

9. Defendant admits the allegations of paragraph 9 of the Complaint.

10. Defendant admits it has refused to credit Plaintiff with seniority from the date of her first employment in November, 1966 and the date of her graduation from stewardess training on December 28, 1966, but Defendant denies the remaining allegations of paragraph X.

First Affirmative Defense

The Complaint fails to state a cause of action upon which relief can be granted.

Second Affirmative Defense

The Complaint fails to allege exhaustion of administrative remedies which is a jurisdictional prerequisite to suit under 42 U. S. C. 2000e, *et seq; i.e.,* failure to first file her charge with the Illinois Fair Employment Practice Commission.

Third Affirmative Defense

Plaintiff failed to file a charge with the Equal Employment Opportunity Commission within the time limits set forth in 42

U. S. C. 2000e, *et seq;* which timely filing is a jurisdictional prerequisite for a civil action under the Act.

Fourth Affirmative Defense

The Act, 42 U. S. C. 2000e, *et seq;* does not provide for exemplary damages.

WHEREFORE, Defendant requests the Court to dismiss and take nothing from her Complaint.

Respectfully submitted,

EARL G. DOLAN
KENNETH A. KNUTSON
P. O. Box 66100
Chicago, Illinois 60666
952-6059
Attorneys for Defendant United Air Lines, Inc.

Dated: September 26, 1974.

(Certificate of Service Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

CAROLYN J. EVANS,
Plaintiff,
vs.
UNITED AIR LINES, INC.,
Defendant.
} Civil No. 74 C 2530

PLAINTIFF'S REPLY TO DEFENDANT'S SECOND AFFIRMATIVE DEFENSE

In accordance with Rule 7(a), Federal Rules of Civil Procedure, and pursuant to Order entered upon direction of the Presiding Magistrate in this cause on October 7, 1974, now comes plaintiff Evans, by and through her attorneys, Dorfman, De Koven, Cohen & Laner, in Reply to defendant United's Second Affirmative Defense, and states that she has exhausted her state administrative remedies in this cause, within the meaning of 42 U. S. C. § 2000e-5(c). In support thereof, plaintiff further states the following:

1. Plaintiff filed her charge against defendant United with the Equal Employment Opportunity Commission (herein called "EEOC") on February 21, 1973. Said EEOC charge is the same EEOC charge referred to in plaintiff's Complaint in this cause.

2. On February 23, 1973, EEOC transmitted said charge by letter to the Illinois Fair Employment Practices Commission (herein called "FEPC") and thereby deferred said charge to said FEPC. Copies of said EEOC deferral letter, and the FEPC certificate acknowledging receipt of same, are attached hereto as Exhibits B (consisting of two pages) and C, respectively,

and are hereby incorporated by reference as if set forth at length herein. A copy of a letter from EEOC District Counsel Dolores Knapp to plaintiff's attorneys, dated October 2, 1974, explaining certain deletions made by EEOC from the aforementioned EEOC deferral letter, is attached hereto as Exhibit A, and is hereby incorporated by reference as if set forth at length herein.

3. During the FEPC meeting of April 11-12, 1973, the Commissioners of the FEPC unanimously voted to issue an order dismissing plaintiff's charge (as specified above) for "incomplete investigation" and returning said charge to the EEOC without prejudice to the rights of the parties concerned. Copies of the relevant portions of the minutes of said FEPC meeting (to wit, pages 1 and 7-11 thereof) are attached hereto as Exhibit F, and are hereby incorporated by reference as if set forth at length herein. A copy of a memorandum dated April 6, 1973, including a four-page list appended thereto, from Leo Franklin of the FEPC to the FEPC Commissioners, and recommending dismissal of plaintiff's aforementioned charge, without prejudice, because of 'the present FEPC backlog", is attached hereto as Exhibit E, and is hereby incorporated by reference as if set forth at length herein. A copy of a letter from Irene Repa, FEPC Assistant Director, Investigation Division, to plaintiff's attorneys, dated October 4, 1974, authenticating Exhibits E and F, is attached hereto as Exhibit D, and is hereby incorporated by reference as if set forth at length herein. (Item 1 referred to in said Repa letter [to wit, the aforementioned EEOC transmittal letter of February 23, 1973 to FEPC] is not attached hereto, in order to avoid duplication of Exhibit B.)

4. On April 23, 1973, following deferral to, and the termination of, state FEPC administrative proceedings concerning

plaintiff's charge, as detailed above, EEOC assumed jurisdiction of said charge, as stated in the Knapp letter (Exhibit A).

WHEREFORE, plaintiff requests the Court to order that defendant's Second Affirmative Defense be stricken from defendant's Answer filed in this cause.

Dated: October 16, 1974.

Respectfully submitted,

DORFMAN, DE KOVEN, COHEN & LANER,
Attorneys for Plaintiff
One IBM Plaza
Suite 3301
Chicago, Illinois 60611
312-467-9800

(Certificate of Service and Exhibits Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

CAROLYN J. EVANS,
Plaintiff,
vs.
UNITED AIR LINES, INC.,
Defendant.

Civil No.
74 C 2530

DEFENDANT'S MOTION TO DISMISS

Defendant, United Air Lines, Inc., moves to dismiss Plaintiff's Complaint filed herein on the ground that this Court is without jurisdiction under Title VII of the Civil Rights Act of 1964 because of the Plaintiff's failure to file charges with the Equal Employment Opportunity Commission within the time provided of the alleged unlawful violation as required as a jurisdictional prerequisite to a civil action under the Act. 42 U. S. C. § 2000e-5(d).

In support of this Motion, Defendant attaches a Memorandum of Authorities which is filed herewith.

Respectfully submitted,

EARL G. DOLAN
KENNETH A. KNUTSON
Attorneys for Defendant,
United Air Lines, Inc.

UNITED STATES DISTRICT COURT

Northern District of Illinois

Eastern Division

Name of Presiding Judge, Honorable Bernard M. Decker

Cause No. 74 C 2530 Date April 9, 1975

Title of Cause—Evans v. United Air Lines, Inc.

Memorandum opinion filed.

Accordingly, Deft.'s Motion to dismiss is granted and complaint briefly dismissed.

Decker, *J.*

April 10, 1975

IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois

Eastern Division

CAROLYN J. EVANS, *Plaintiff,*

vs.

UNITED AIR LINES, INC., *Defendant.*

No. 74 C 2530

MEMORANDUM OPINION

Plaintiff employee has filed this action against defendant employer under Title VII of the Civil Rights Act of 1964 to seek redress for defendant's alleged illegal sex discrimination. Plaintiff complains that she was forced to resign her position as a stewardess in February, 1968, pursuant to United's "no marriage" rule for female flight personnel. In November, 1968, United ended its "no marriage" policy, and in February, 1972, plaintiff was hired by United as a stewardess. On February 21, 1973, plaintiff, for the first time, filed a charge of discrimination against United with the EEOC. In response, the EEOC issued a right-to-sue letter to plaintiff, who then filed this action.

Pursuant to F. R. Civ. P. 12(b)(1), defendant has moved to dismiss the complaint on the ground that this court is without jurisdiction in this case under Title VII because of plaintiff's failure to file charges with the EEOC within a certain specified period of time from the date of the alleged unlawful discrimination.

Prior to the 1972 Amendments to the Act, when plaintiff was forced to resign her position, § 2000e-5(d) provided that in order to bring an action under this section, a person must file

a charge with the EEOC within ninety days after the occurrence of the alleged unlawful employment practice.[1] Plaintiff waited five years before filing her charge. The requirement that one complaining of discrimination on the basis of sex must invoke the administrative process within the time limitations set forth in 42 U. S. C. § 2000e-5 is a jurisdictional precondition to the commencement of a court action. *Choate* v. *Caterpillar Tractor Company*, 402 F. 2d 357, 359 (7th Cir. 1968). Plaintiff agrees, but argues that in this case there exists a "continuing violation" brought about by United's current refusal to credit plaintiff with any seniority prior to her employment in February, 1972. Plaintiff asserts that by defendant's denial of her seniority back to the starting date of her original employment in 1966, United is currently perpetuating the effect of past discrimination.

Plaintiff, however, has not been suffering from any "continuing" violation. She is seeking to have this court merely reinstate her November, 1966 seniority date which was lost solely by reason of her February, 1968 resignation. The fact that that resignation was the result of an unlawful employment practice is irrelevant for purposes of these proceedings because plaintiff lost her opportunity to redress that grievance when she failed to file a charge within ninety days of February, 1968. United's subsequent employment of plaintiff in 1972 cannot operate to resuscitate such a time-barred claim.

Accordingly, defendant's motion to dismiss is granted, and the complaint is hereby dismissed.

ENTER:

/s/ BERNARD M. DECKER
United States District Judge

Dated: April 9, 1975.

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1. By Act of March 24, 1972, Pub. L. 92-261, § 4(a), 86 Stat. 103, former subsection (d) was relettered to (e), and the time for filing charges was extended from ninety days to one hundred and eighty days.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

CAROLYN J. EVANS,
Plaintiff,
vs.
UNITED AIR LINES, INC.,
Defendant.
No. 74 C 2530

NOTICE OF APPEAL

Notice is hereby given that Carolyn J. Evans, plaintiff above named, by and through her attorneys, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the order dismissing the complaint, entered in this action on the 9th day of April, 1975.

Dated: May 5, 1975

DORFMAN, DE KOVEN, COHEN & LANER
Attorneys for Plaintiff
By: /s/ ALAN M. LEVIN

DORFMAN, DE KOVEN, COHEN & LANER
Attorneys for Plaintiff
One IBM Plaza, Suite 3301
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(312) 467-9800

Per Curiam Opinion
(Judge Cummings Dissents)

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

January 29, 1976

Before

HON. WALTER J. CUMMINGS, *Circuit Judge*
HON. ARLIN M. ADAMS, *Circuit Judge**
HON. ROBERT A. SPRECHER, *Circuit Judge*

CAROLYN J. EVANS,
Plaintiff-Appellant,

No. 75-1481 *vs.*

UNITED AIR LINES, INC.,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 74 C 2530

Bernard M. Decker, Judge.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this date.

* Honorable Arlin M. Adams, Cirucit Judge of the United States Court of Appeals for the Third Circuit, is sitting by designation.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 75-1481

CAROLYN J. EVANS,
Plaintiff-Appellant,

vs.

UNITED AIR LINES, INC.,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois.

74-C-2530

BERNARD M. DECKER, *Judge*

Argued November 6, 1975—Decided January 29, 1976

Before CUMMINGS, ADAMS,* and SPRECHER, *Circuit Judges.*

PER CURIAM:—This suit was brought by Carolyn J. Evans, under Title VII of the Civil Rights Act of 1964,[1] to recover seniority and back pay that she claims she has lost because of her separation from employment with United Air Lines. The complaint alleged that United discriminated against Evans in February, 1968, when United, by reason of Evans' marriage forced her to resign her employment as a stewardess, and that the effect of the termination is a continuing one, perpetuated by

* The Honorable Arlin M. Adams, Circuit Judge of the United States Court of Appeals for the Third Circuit, is sitting by designation.

1. 42 U. S. C. § 2000e *et seq.* (Supp. III 1973).

the current policies of United which for seniority purposes consider only continuous time in service.

Evans was employed by United as a stewardess from November, 1966 until February, 1968, when she involuntarily resigned. During that period it was the policy of United that marriage disqualified a woman from continuing her employment as a stewardess. On November 7, 1968, United discontinued its policy of requiring stewardesses to remain unmarried,[2] and on February 16, 1972, Evans was again hired as a new employee of United. She was provided stewardess training for newly hired employees which she completed on March 16, 1972.

Evans' charge of discrimination was filed with the EEOC on February 21, 1973—five years after her termination from employment, and more than four years after United eliminated its no-marriage rule. She had not filed any prior charge of discrimination with the EEOC, or with any other governmental agency, or in any way challenged United's no-marriage rule.

United took the position that a timely filing of a charge of discrimination with the EEOC is a jurisdictional prerequisite to

2. United, by letter agreement of November 7, 1968 with a collective bargaining agent, agreed to reinstate those stewardesses who had been terminated under the no-marriage rule and who had filed charges or grievances. Every stewardess desirous of reinstatement was required to make application within thirty days of notification of this agreement. Evans did not qualify for reinstatement under this agreement because she had not filed a prior charge of discrimination against United with the EEOC or any state agency, nor had she filed a grievance under the applicable collective bargaining agreement.

By an October 16, 1969 letter agreement United undertook to reinstate those stewardesses who had transferred to ground positions because of the no-marriage rule and who were employed by United on that date. Evans acquired no right under the letter agreement of October 16, 1969 inasmuch as she had not transferred to a ground position and was not an employee with United as of October 16, 1969.

United's no-marriage policy for stewardesses was held unlawfully discriminatory in Sprogis v. United Air Lines, Inc., 444 F. 2d 1194, 3 FEP Cases 621 (7th Cir.), *cert. denied*, 404 U. S. 991 (1971).

filing a civil action under Title VII. *Choate* v. *Caterpillar Co.*, 402 F. 2d 357, 359, 1 FEP Cases 431, 433, 69 LRRM 2486 (7th Cir. 1968). Therefore it moved to dismiss the complaint on the ground that Evans had failed to file a charge with the EEOC within ninety days of the alleged unlawful practice[3] which occurred in February, 1968, United claimed, when Evans was forced to resign as a stewardess and her employment and seniority were terminated. The district court granted United's motion to dismiss the complaint on the ground that plaintiff "has not been suffering from any 'continuing' violation" and is "seeking to have the court merely reinstate the November, 1966 seniority date which was lost solely by reason of her February, 1968 resignation."

Evans appeals and we affirm.

I.

Evans claims that a current employment practice or policy, though facially neutral, is unlawful if by its operation it enables prior discrimination to reach into the present, and thus prolongs the effect of such prior discrimination. She also contends that where the challenged employment practice is current and continuing, the usual procedural requirement of Title VII, that an EEOC charge "be filed within one hundred and eighty days after the alleged unlawful employment practice occurred," is inapplicable. Evans appears to argue that where the practice is a persistent one, a charge filed at any time during the practice's continuance is *ipso facto* timely.

Her charge would not be timely and the jurisdictional prerequisites to a civil action would not be fulfilled under the Civil Rights Act, Evans concedes, unless her theory of a continuing violation is valid. Evans also concedes that United's current

3. Prior to the 1972 Amendments of the Civil Rights Act, 42 U. S. C. § 2000e-5(e) provided that in order to bring an action under this section, a person must file a charge with the EEOC within ninety days after the occurrence of the alleged unlawful employment practice.

seniority policy is facially neutral with respect to sex,[4] and she does not contend that United still discriminates against females by reason of any current no-marriage policy. She does maintain however, that United's discriminatory termination in February, 1968 caused her to lose her seniority and, as a result of both that termination and United's on-going seniority policy, she suffers a discriminatory loss of seniority and related benefits, including pay, to the present date.

On the other hand, United asserts that the only legally cognizable injury to Evans was her termination of employment and seniority in February, 1968. That she was subsequently hired as a new employee cannot alter the fact, United asserts, that Evans lost her former seniority when she was terminated. It was this termination, in 1968, which began the running of the time limit with respect to the loss of her employment and associated benefits, according to United's theory of the case.

United argues that if a discriminatory act is considered to continue for so long as there is some lingering effect, every alleged discriminatory act could be litigated at any time. An alleged discrimination, United reasons, would never be final, despite the limitation period under section 2000e-5(e), since there might always be some lingering effects—monetary or otherwise.

II.

In *Collins* v. *United Airlines*, 541 F. 2d 594 (9th Cir. 1975), decided after the judgment here was entered by the district court, the plaintiff, a stewardess for United, was required to resign in 1967 because of United's no-marriage rule. In 1971, more than four years after her resignation, she filed

4. United's policy of crediting toward seniority only *continuous* time in service works to the disadvantage of rehired employees. A new employee who was hired in the interim between the rehired employee's termination and rehiring will have greater seniority than the rehired employee, although the new employee may have less total time in service. This policy would seem to be neutral, however, as between male and female employees.

a charge with EEOC, contending like Evans, that she had been terminated improperly under Title VII. Collins argued that her complaint was timely filed because the alleged violation was a continuing one, since United had steadfastly denied to her all employment privileges, including her prior seniority. The district court dismissed on the basis of untimeliness. In affirming the district court, the Court of Appeals for the Ninth Circuit stated:

> We cannot accept Collins' argument that her continuing non-employment as a stewardess resulting from the alleged unlawful practice is itself a violation of the Act. Under the statute, it is the alleged unlawful act or practice—not merely its effects—which must have occurred within 90 days preceding the filing of charges before the EEOC. Were we to hold otherwise, we would undermine the significance of the Congressionally mandated 90-day limitation period.

The major difference between the *Collins* case and the case at hand is that Evans was re-employed as a stewardess several years after her original employment and her original cause of action had ended, whereas Collins was not re-employed. Evans argues that the violation here is a continuing one because United's current practice is to deny her seniority credit for the period prior to 1972.

Evans would have this Court find a present discrimination when the adverse effect of a past discrimination is still felt because of a current policy of the employer, even though such current policy is not discriminatory with respect to sex.[5] This is congruent with the thesis that the Ninth Circuit specifically declined to accept in *Collins* when it stated that "the alleged unlawful act or practice—not merely its effects— . . . must

5. Such a holding, however, might well discourage an employer from re-hiring a worker against whom it had discriminated previously. This reluctance would stem from both the direct burden of additional costs associated with such an employee and the fear of disruption of the employer's relations with other employees who might consider themselves to be unfairly disadvantaged, in terms of the regular and neutral seniority program, relative to the rehired employee.

have occurred within [the statutory period] preceding the filing of charges before the EEOC."[6]

In Waters v. Wisconsin Steel Works, 502 F. 2d 1309 (7th Cir. 1974), *petition for cert. filed*, 44 LW 3037 (U. S. Feb. 24, 1975 (No. 74-1064), this Court adopted essentially the same rationale that the Ninth Circuit employed in *Collins*. Wisconsin Steel had engaged in racially discriminatory hiring practices, but in 1964 it began to hire black bricklayers, including Waters, who was hired in July. When business slackened in September, 1964, Waters was among those laid off, pursuant to a "last hired, first fired" seniority system. Waters contended that this seemingly neutral policy of last hired, first fired served to perpetuate past discrimination because recently hired blacks were disadvantaged relative to whites who might not have had greater seniority but for the prior discriminatory hiring practices. Waters' argument was rejected by this Court, which stated:

> Wisconsin Steel's employment seniority system embodying the "last hired, first fired" principle of seniority is not

6. *Accord*, Buckingham v. United Air Lines, 11 FEP Cases 344 (C. D. Cal. 1975) (dictum), decided independently of *Collins*. In *Buckingham* eight stewardesses alleged discriminatory terminations or transfers to ground positions by United pursuant to its no-marriage policy. The stewardesses filed charges within 90 days of the agreement between their union and United rescinding the "no-marriage" policy, see note 2 supra, but more than 90 days after the allegedly discriminatory transfers and terminations. The stewardesses contended that the agreement, which restored no rights to them, perpetuated the effects of the prior discrimination and was, therefore, discriminatory in itself. The district court decided that the transfers and terminations in question were not discriminatory in fact, and also concluded that:

> [e]mployer action . . . such as the termination or transfer of an employee . . . constitutes a 'completed act' at the time it occurs, and unless a charge of discrimination is filed with the Equal Employment Opportunity Commission within the completed time period following the completed act, an action under Title VII is barred.

11 FEP Cases at 349.

> of itself racially discriminatory [n]or does it have the effect of perpetuating prior racial discrimination in violation of the strictures of Title VII.[7]

The *Waters* decision adjudicated more issues than this one. But the seniority issue was not insignificant in *Waters* and this Court appears to have concluded that detriments that stem from the interaction of a prior discrimination and a seniority policy that is not discriminatory in itself cannot be deemed to be proximately caused by the prior discrimination.

The holding in *Waters* must inform our decision here.[8] United's seniority policy in itself is not discriminatory with respect to sex.[9] A policy which is neutral cannot be said to perpetuate past discriminations in the sense required to constitute a current violation of Title VII. If there is no continuing discriminatory practice with respect to Evans, her only basis for charging discrimination as a result of United's no-marriage policy is the termination in 1968. A suit based on that termination alone, however, would be

7. 502 F. 2d at 1318. This holding is distinct from another portion of Waters in which a "present perpetuation of the racial discrimination of the past" was found. There an amendment to the regular seniority policy, which favored only eight specific whites who had previously worked for the company but who had cut all ties with the firm by accepting severance pay, was determined to be an expression of a discriminatory policy in the circumstances of the case. 502 F. 2d at 1320-21, *petition for cert. filed sub nom.* Bricklayers and Stone Masons, Local 21 v. Waters, 44 LW 3038 (U. S. Apr. 25, 1975) (No. 74-1350). Unlike the Wisconsin Steel Works, however, United does not appear to have deviated from its regular, and neutral, seniority policy in its dealings with Evans.

8. But see Tippett v. Liggett & Meyers Tobacco Co., 316 F. Supp. 292 (N. D. N. C. 1970); EEOC Dec. No. 71-413, 3 FEP Cases 233 (1970). Two of the cases emphasized by Evans—Burwell v. Eastern Airlines, 394 F. Supp. 1361, 10 FEP Cases 882 (E. D. Va. 1975), and Marquez v. Omaha District Sales Office, 440 F. 2d 1157, 3 FEP Cases 275 (8th Cir. 1971)—involved continuing employer policies discriminatory in themselves, whereas in the present case the current seniority policy of United is neutral on its face with regard to sex.

9. See note 4 *supra* and accompanying text.

barred for failure to file a charge relating to the termination within the statutorily required period.

Accordingly, the judgment of the district court is affirmed.

CUMMINGS, *Circuit Judge* (dissenting):—With due respect, I dissent. The gravamen of the complaint is that United has continued to fail to credit plaintiff with prior seniority. This is a current practice of defendant and results in plaintiff's receiving less seniority than male stewards hired between her February 1968 illegally forced resignation and her February 1972 reemployment. The majority, incorrectly I believe, holds that this suit, filed in 1973, is barred by the pertinent statute of limitations, 42 U. S. C. § 2000e-5(e).[1] However, as we held in *Cox* v. *United States Gypsum Company*, 409 F. 2d 289 (7th Cir. 1969), and again in *Bartmess* v. *Drewrys U. S. A., Inc.*, 444 F. 2d 1186, 1188 (7th Cir. 1971), certiorari denied, 404 U. S. 939, the limitation contained in what is now Section 2000e-5(e) is no bar when a continuing practice of discrimination is being challenged.

The issue then is whether defendant's policy is an act of continuing discrimination. In analyzing this issue the threshold question the court should ask is: does Title VII of the Civil Rights Act of 1964 (42 U. S. C. § 2000e et seq.) impose an obligation upon the employer which was allegedly violated by the challenged policy at the time plaintiff instituted this action? To determine whether there was a violation, it should next consider whether the challenged facially neutral policy gives collateral effect to a past act of discrimination, and, if so, whether the past act of discrimination is the proximate cause of the disparity complained of by plaintiff. If these conditions have been met, the plaintiff has proven discrimination in violation of Title VII. See *Pettway* v. *American Cast Iron Pipe Co.*, 494 F. 2d 211, 236

1. The predecessor Section 2000e-5(d) required that a charge be filed with the EEOC within 90 days after the occurrence of the unlawful practice. In 1972, the period was extended to 180 days.

(5th Cir. 1974); *United States* v. *N. L. Industries, Inc.*, 479 F. 2d 354 (8th Cir. 1973).

Applied to the facts of this case, this analysis inexorably results in the conclusion that United's failure to credit plaintiff with back seniority is a current act of discrimination. Clearly, Title VII requires employers to determine an employee's seniority on a non-discriminatory basis. See 42 U. S. C. § 2000e2(h); *United States* v. *N. L. Industries, supra*. Because plaintiff's seniority is being measured from the date of her re-employment, defendant's policy gives collateral effect to its past act of discrimination, *viz.*, plaintiff's illegal termination. That 1968 wrongful act is the proximate cause of the existing disparity between plaintiff's wages and working conditions and those of male stewards hired between February 1968 and February 1972. Defendant is thus presently perpetuating the effects of its past discrimination. Plaintiff's charge was therefore timely filed and the district court had jurisdiction of her action. *Choate* v. *Caterpillar Tractor Co.*, 402 F. 2d 357, 359 (7th Cir. 1968).

The Equal Employment Opportunity Commission considered plaintiff's charge to be timely, and its interpretation of the time limitation contained in 42 U. S. C. § 2000e-5(e) deserves deference. *Cox* v. *United States Gypsum Company*, 409 F. 2d 289, 291 (7th Cir. 1969). This view of timeliness has judicial and administrative support.

In *Burwell* v. *Eastern Air Lines, Inc.*, 394 F. Supp. 1361, 1367 (E. D. Va. 1975), stewardess Burwell was terminated for pregnancy. Seven months later she was reinstated with loss of seniority. Although Eastern had changed its maternity policy prior to suit, Judge Merhige held that her EEOC charge almost three years after her return to Eastern was a timely filing with the EEOC because of her continuing loss of seniority. His reasoning is similar to that adopted earlier by the Commission in a case on all fours with the one at bar. EEOC Doc. No. 71-413, 3 FEP Cases 233 (1970). We should pay heed to its construction of Title VII (*Griggs* v. *Duke Power Co.*, 401 U. S. 424, 434, *Choate*

v. *Caterpillar Tractor Co., supra* 402 F. 2d at 360) and therefore require United to bridge plaintiff's seniority. See *Marquez* v. *Omaha District Sales Office,* 440 F. 2d 1157, 1159-1160 (8th Cir. 1971); *Tippett* v. *Liggett & Myers Tobacco Co.,* 316 F. Supp. 292, 295-296 (M. D. N. C. 1970); *Healen* v. *Eastern Air Lines,* 8 FEP Cases 917 (N. D. Ga. 1973).

Defendant maintains a present bias by enabling its past bias to reach into the present through its seniority practice. United should not be able now to penalize the victim of its prior discrimination.[2]

The cases relied on by the majority are readily distinguishable. In *Collins* v. *United Airlines,* 514 F. 2d 594 (9th Cir. 1975), plaintiff sought reinstatement several years after she had been terminated pursuant to United's "no marriage" rule. The alleged continuing discrimination in *Collins* was the failure to rehire plaintiff. Title VII, however, imposes no obligation on the employer to hire anyone unless the refusal is motivated by discrimination. There was no evidence in *Collins* that the decision not to rehire the plaintiff was based at all upon the past act of discrimination. In *Buckingham* v. *United Airlines,* 11 FEP Cases 344, 345 (C. D. Cal. 1975), the court specifically found that plaintiffs' terminations or transfers were not caused by the no marriage rule or any other act of discrimination. Finally, *Waters* v. *Wisconsin Steel Works,* 502 F. 2d 1309 (7th Cir. 1974), is inapposite. In that case, the plaintiffs failed to show that the prior discrimination was the proximate cause of their layoffs.

I would reverse.

2. The majority's fear that a finding of continuing discrimination in this case would discourage the re-employment of wronged employees is not warranted. After her termination, the plaintiff here filed a grievance with the Union. United's decision to rehire her resulted from Union pressure, which would have been applied without regard to our holding in this case.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

April 6, 1976

Before

HON. WALTER J. CUMMINGS, *Circuit Judge*
HON. ARLIN M. ADAMS, *Circuit Judge**
HON. ROBERT A. SPRECHER, *Circuit Judge*

CAROLYN J. EVANS,
Plaintiff-Appellant,

No. 75-1481 *vs.*

UNITED AIR LINES, INC.,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 74-C-2530

Bernard M. Decker, Judge.

ORDER

The plaintiff-appellant's petition for rehearing is granted.

* The Honorable Arlin M. Adams, Circuit Judge of the United States Court of Appeals for the Third Circuit, is sitting by designation.

On Petition for Rehearing
Opinion by Judge Adams

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

April 26, 1976

Before
HON. WALTER J. CUMMINGS, *Circuit Judge*
HON. ARLIN M. ADAMS, *Circuit Judge**
HON. ROBERT A. SPRECHER, *Circuit Judge*

CAROLYN J. EVANS,
Plaintiff-Appellant,

No. 75-1481 *vs.*

UNITED AIR LINES, INC.,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 74 C 2530

Bernard M. Decker, Judge.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Reversed and Remanded, with costs, in accordance with the opinion of this Court filed this date.

* The Honorable Arlin M. Adams, Circuit Judge of the United States Court of Appeals for the Third Circuit, is sitting by designation.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 75-1481

CAROLYN J. EVANS,
Plaintiff-Appellant,

vs.

UNITED AIR LINES, INC.,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division 74-C-2530
BERNARD M. DECKER,
Judge.

On Petition for Rehearing

ARGUED NOVEMBER 6, 1975—DECIDED APRIL 26, 1976

Before CUMMINGS, ADAMS* and SPRECHER, *Circuit Judges.*

ADAMS, *Circuit Judge.* This suit was brought by Carolyn J. Evans, under Title VII of the Civil Rights Act of 1964,[1] to recover seniority and back pay that she allegedly lost because of her separation from employment with United Air Lines. The complaint claims that United discriminated against Evans in February, 1968, when United, by reason of Evans' marriage, forced her to resign her employment as a stewardess. She also asserts, however, a continuing discrimination against her as a

* The Honorable Arlin M. Adams, Circuit Judge of the United States Court of Appeals for the Third Circuit, is sitting by designation.

1. 42 U. S. C. § 2000e *et seq.* (Supp. III 1973).

result of the current application of United's seniority policies, which consider only continuous time-in-service and thereby perpetuate the adverse effects of the original discriminatory discharge.

Evans was employed by United as a stewardess from November, 1966 until February, 1968, when she involuntarily resigned. During that period it was the policy of United that marriage disqualified a woman from continuing her employment as a stewardess. On November 7, 1968, United discontinued its policy of requiring stewardesses to remain unmarried,[2] and on February 16, 1972, Evans was again hired as a new employee of United. She was provided stewardess training for newly hired employees, which she completed on March 16, 1972.

Evans filed a charge of discrimination with the EEOC on February 21, 1973—five years after her termination from employment, and more than four years after United eliminated its no-marriage rule. She had not filed any prior charge of discrimination with the EEOC, or with any other governmental agency, or in any way challenged United's no-marriage rule.

2. United, by letter agreement of November 7, 1968 with a collective bargaining agent, agreed to reinstate those stewardesses who had been terminated under the no-marriage rule and who had filed charges or grievances. Every stewardess desirous of reinstatement was required to make application within thirty days of notification of this agreement. Evans did not qualify for reinstatement under this agreement because she had not filed a prior charge of discrimination against United with the EEOC or any state agency, nor had she filed a grievance under the applicable collective bargaining agreement.

By an October 16, 1969 letter agreement, United undertook to reinstate those stewardesses who had transferred to ground positions because of the no-marriage rule and who were employed by United on that date. Evans acquired no right under the letter agreement of October 16, 1969 inasmuch as she had not transferred to a ground position and was not an employee with United as of October 16, 1969.

United's no-marriage policy for stewardesses was held unlawfully discriminatory in *Sprogis* v. *United Air Lines, Inc.*, 444 F. 2d 1194 (7th Cir.), *cert. denied*, 404 U. S. 991 (1971).

United took the position that a timely filing of a charge of discrimination with the EEOC is a jurisdictional prerequisite to filing a civil action under Title VII. *Choate* v. *Caterpillar Co.*, 402 F. 2d 357, 359 (7th Cir. 1968). Therefore it moved to dismiss the complaint on the ground that Evans had failed to file a charge with the EEOC within ninety days of the alleged unlawful practice[3] which occurred in February, 1968, United claimed, when Evans was forced to resign as a stewardess and her employment and seniority were terminated.

The district court granted United's motion to dismiss the complaint on the ground that plaintiff "has not been suffering from any 'continuing' violation" and is "seeking to have the court merely reinstate the November, 1966 seniority date which was lost solely by reason of her February, 1968 resignation."

Evans brought this appeal. After argument, the Court affirmed the dismissal by the trial court, relying upon an interpretation of *Waters* v. *Wisconsin Steel Works*.[4] Petitions for rehearing by the panel and *en banc* were filed. Pending the consideration of those petitions, the Supreme Court decided *Franks* v. *Bowman Transportation Co.*[5] In view of the Supreme Court's decision, rehearing was granted by the panel on April 6, 1976. We now reverse and remand.

I.

Evans claims that a current employment practice or policy, though facially neutral, is unlawful if by its operation it enables prior discrimination to reach into the present, and thus prolongs the effect of such discrimination. She also contends that where

3. Prior to the 1972 Amendments of the Civil Rights Act, 42 U. S. C. § 2000e-5(e) provided that in order to bring an action under this section, a person must file a charge with the EEOC within ninety days after the occurrence of the alleged unlawful employment practice.

4. 502 F. 2d 1309 (7th Cir. 1974), *pet. for cert. filed*, 44 U. S. L. W. 3037 (U. S., Feb. 24, 1975) (No. 74-1064).

5. 44 U. S. L. W. 4356 (U. S. Mar. 24, 1976).

the challenged employment practice is current and continuing, the usual procedural requirement of Title VII, that an EEOC charge "be filed within one hundred and eighty days after the alleged unlawful employment practice occurred," is inapplicable. Evans appears to argue that where the practice is a persisent one, a charge filed at any time during the continuance of the practice is *ipso facto* timely.

Her charge would not be timely and the jurisdictional preequisites to a civil action would not be fulfilled under the Civil Rights Act, Evans concedes, unless her theory of a continuing violation is valid. Evans also concedes that United's curent seniority policy is facially neutral with respect to sex,[6] and she does not contend that United still discriminates against females by reason of any current no-marriage policy. She does maintain however, that United's discriminatory termination in February, 1968 caused her to lose her seniority and, as a result of that termination in combination with United's on-going seniority policy, she suffers a discriminatory loss of seniority and related benefits, including pay, to the present date.

On the other hand, United asserts that the only legally cognizable injury to Evans was her termination of employment and seniority in 1968. In this respect, United's argument would appear to rest, *sub silentio*, on the protection afforded bona fide seniority systems by section 2000e-2(h). That section provides:

> Notwithstanding any other provision of this sub-chapter, it shall not be an unlawful employment pactice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority . . . system. . . .

6. United's policy of crediting towardseniority only *continuous* time-in-service works to the disadvantae of rehired employees. A new employee who was hired in the interim between the former employee's termination and rehiring will have greater seniority than the rehired employee, although the new employee may have less total time-in-service. This policy would seem to be neutral, however, as between male and female employees.

Since it is agreed that United's continuous-time-in-service seniority system is facially neutral with regard to sex, the present application of the seniority policy to Evans is not a violation of Title VII, according to United. Rather, in their view of the case, any actionable injury to Evans stems from her termination in February, 1968, whereby she lost her initial seniority. And it was from such date that the time limit began to run, and has long-since expired, with respect to any disadvantages in employment-related benefits.

United argues that if a discriminatory act is considered to continue for so long as there is some lingering effect, every alleged discriminatory act could be litigated at any time. A discrimination, United reasons, would never be final, despite the limitation period under section 2000e-5(e), since there might always be some lingering effects—monetary or otherwise.

II.

The Supreme Court addressed the scope of the neutral-seniority-policy defense set forth in section 2000e-2(h) in *Franks* v. *Bowman Transportation Co.*[7] The Court in *Franks* was asked to determine whether Section 2000e-2(h) (section 703(h) of the Civil Rights Act of 1964) precluded the grant of retroactive seniority as a form of relief to job applicants who had not been hired because of racial discrimination. It held that such relief was appropriate, despite a facially neutral seniority policy, where the individual complainants could prove that they had been the actual victims of discriminatory hiring practices.[8] The decision was predicated upon the Supreme Court's conclusion

7. 44 U. S. L. W. 4356 (U. S. Mar. 24, 1967).

8. *Id.* at 4359, 4361, 4363. This Court's decision in *Waters* v. *Wisconsin Steel Works*, 502 F. 2d 1309 (7th Cir. 1974), *pet. for cert. filed.* 44 U. S. L. W. 3037 (U. S., Feb. 24, 1975) (No. 74-1064), would not appear to be to the contrary. In *Waters*, the employees do not seem to have established a causal linkage between their seniority status, which resulted in their lay-offs, and specific acts of discrimination directed at them personally.

that section 2000e-2(h) was intended to protect only those seniority rights that were established prior to the effective date of Title VII in 1965:[9]

> [W]hatever the exact meaning and scope of § 703(h) in light of its unusual legislative history and the absence of the usual legislative materials, . . . it is apparent that the thrust of the section is directed toward defining what is and what is not an illegal discriminatory practice in instances in which the post-Act operation of a seniority system is challenged as perpetuating the effects of discrimination occurring prior to the effective date of the Act.

As the Supreme Court observed, Congress is well aware that employment discrimination is a "complex and pervasive phenomenon."[10] The House report on the Equal Employment Opportunity Act Amendments of 1972 notes that

> Experts familiar with the subject generally describe the problem in terms of "system" and "effect" rather than simply intentional wrongs. The literature on the subject is replete with discussions of the mechanics of seniority in lines of progression, perpetuation of the present effects of earlier discriminatory practices through various institutional devices, and testing and validation requirements. . . . Particularly to the untrained observer their discriminatory nature may not appear obvious at first glance.[11]

The Supreme Court reiterated in *Franks* that "in enacting Title VII of the Civil Rights Act of 1964, Congress intended to prohibit all practices in whatever form which create inequality in employment opportunity. . . ."[12]

"[O]ne of the central purposes of Title VII is to make persons whole for injuries suffered on account of unlawful employment

9. *Id.* at 4360.

10. *Id.* at 4361 n. 21.

11. H. Rep. No. 92-238, 92nd Cong., 1st Sess. (1971), *reprinted in* 1972 U. S. Code, Cong. & Admin. News 2137, 2144.

12. 44 U. S. L. W. at 4360.

discrimination," the Court said.[13] Therefore, it concluded that "[a]dequate relief may well be denied in the absence of a seniority remedy slotting the victim in that position of the seniority system that would have been his had he been hired at the time of his application."[14]

III.

It is in the context of the *Franks* decision that we must consider whether Evans' complaint was filed within 90 days of a violation of Title VII, thus affording jurisdiction to the district court. More specifically, the issue is whether section 2000e-2(h) may be used to interpose a legal bar to Evans' theory that the perpetuation of past discrimination through United's current seniority policy constitutes a continuing violation of her Title VII rights.

A seniority policy that credits only continuous time-in-service necessarily has an adverse impact on rehired employees who have more total time-in-service, but less continuous time-in-service, than newly hired employees. This disadvantaged class of rehired employees may include employees who were rehired subsequent to terminations that resulted from prior discriminatory practices. Evans claims to be an employee of the latter type.

It is apparent that United's continuous-time-in-service seniority program may put an employee who has been discharged and later rehired into an inferior seniority position than would have been the case if the employees had not been discharged and, thereby, perpetuates some of the disadvantages resulting from the prior discharge. If the prior discharge was itself a discriminatory one, then United's seniority policy is an instrument that extends the impact of past discrimination, albeit unintentionally. Consequently, the present application of United's seniority policy is deemed to be discriminatory. It has been held in a

13. *Id.*

14. *Id.* at 4361.

number of instances that a facially neutral seniority policy may be in violation of Title VII if its effect is to perpetuate the disadvantages accruing from prior discrimination.[15]

The teaching of *Franks* confirms these holdings. Section 2000e-2(h) must be understood as relatively narrow, although necessary, exception to the Congressional intent to prohibit all practices of whatever form that create inequalities. It applies only to seniority rights vesting before the 1965 effective date of Title VII. United's seniority program, however, transmits into the present the disadvantages allegedly resulting from a 1968 discrimination. In these circumstances, section 2000e-(h) cannot be used to erect a legal bar to Evans' claim that she is the victim of a current discrimination as a result of a present seniority practice that imposes upon her the effects of a past employment discrimination by United.

For the above reasons, we conclude that Evans' complaint, having been filed during the pendency of the alleged discrimination, was not time-barred. Accordingly, we reverse and remand the cause to the district court for action consistent with this opinion.

15. *Acha* v. *Beame*, ... F. 2d ..... (2d Cir. 1976); *Pettway* v. *American Cast Iron Pipe Co.*, 494 F. 2d 211, 236 (5th Cir. 1974); *United States* v. *N. L. Industries, Inc.*, 479 F. 2d 354 (8th Cir. 1973); *Tippett* v. *Liggett & Meyers Tobacco Co.*, 316 F. Supp. 292 (M. D. N. C. 1970); *Healen* v. *Eastern Air Lines*, 8 FEP Cases 917 (N. D. Ga. 1973); EEOC Dec. No. 71-413, 3 FEP Cases 233 (1970). *See Griggs* v. *Duke Power Co.*, 401 U. S. 424, 430 (1971), where the Supreme Court declared:

> Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to "freeze" the status quo of prior discriminatory employment practices.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

June 7, 1976

Before:

HON. WALTER J. CUMMINGS, *Circuit Judge*,
HON. ARLIN M. ADAMS,* *Circuit Judge*,
HON. ROBERT A. SPRECHER, *Circuit Judge*.

No. 75-1481.

CAROLYN J. EVANS,
Plaintiff-Appellant,

vs.

UNITED AIR LINES, INC.,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

On consideration of the petition of the appellee, United Air Lines, Inc., for a hearing by the Court in the above-entitled appeal, and no member of the panel and no judge in regular active service having requested that a vote be taken on the suggestion for an *en banc* rehearing, and the panel having voted to deny a rehearing.

IT IS ORDERED that the petition of the appellee for a rehearing in the above-entitled appeal be, and the same is hereby denied.

* The Honorable Arlin M. Adams, Circuit Judge of the United States Court of Appeals for the Third Circuit, is sitting by designation.